Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
IP-Enabled Services	)	WC Docket No. 04-36
E911 Requirements for IP-Enabled Service Providers	)	WC Docket No. 05-196

REPLY COMMENTS OF NET2PHONE, INC.

Net2Phone, Inc. and its subsidiaries ("Net2Phone") respectfully submit these reply comments in response to the Notice of Proposed Rulemaking issued by the Federal Communications Commission ("FCC" or "Commission") with regard to E911 requirements for IP-enabled service providers.[1/]

I. INTRODUCTION

Originally conceived as a computer-to-computer service, Net2Phone has been at the forefront of the VoIP services market by expanding its services to provide customers with a broad range of VoIP service choices. Among its array of VoIP-related products, Net2Phone offers enterprise solutions targeting small and medium sized businesses, broadband telephony, and VoIP products for delivery through cable, Wi-Fi, and satellite applications. Net2Phone is not a large company, and the FCC's *VoIP E911 Order* has the potential to significantly impact the company's operations.

1/ *IP-Enabled Services, E911 Requirements for IP-Enabled Service Providers*, WC Dockets Nos. 04-36, 05-196, First Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 10245 (2005) ("*VoIP E911 Order*").

Net2Phone has consistently, as a VoIP services provider, recognized the importance to VoIP users of ready access to emergency services. Throughout development of its operations, Net2Phone has consistently sought out and maintained contracts for provision of either E911 service or basic 911 service for its customers. In its wholesale business, Net2Phone consistently urges its contractors to make provisions for 911 services for their customers, and Net2Phone has, on many occasions, helped its wholesale clients make arrangements for 911 services for their systems.

The need for VoIP service users to have access to emergency services is without question. The FCC's recent order, however, may have some unintended consequences that have the potential to leave many users and areas worse off, instead of better. Net2Phone respectfully requests that the Commission carefully review the suggestions it makes to help avoid some of these potential difficulties.

II. IT IS IN THE PUBLIC INTEREST TO PERMIT PROVIDERS TO USE BASIC 911 SYSTEMS AS AN INTERIM SOLUTION IN CERTAIN CIRCUMSTANCES.

A. In Areas Where E911 Services Are Not Reasonably Available to VoIP Providers Through Third-Party Vendors, Provision of Basic 911 Service Should Be Certified as Sufficient to Meet the Regulatory Mandate.

In the *VoIP E911 Order*, the FCC required that "within 120 days of the effective date of this Order [*i.e.*, by November 28, 2005],[2/] an interconnected VoIP provider must transmit all 911 calls, as well as call back number and the caller's "Registered Location" for each call, to the PSAP . . . that serves the caller's Registered Location . . . through the

[2/] Public Notice, *OMB Grants Emergency Approval of New VoIP E911 Rules Adopted in IP-Enabled Services First Report and Order; Effective Date is July 29, 2005*, WC Docket No. 04-36, DA 05-1992 (rel. July 12, 2005).

use of ANI . . . via the dedicated Wireline E911 Network."[3/] The Commission itself suggested that this "is an aggressively short amount of time in which to comply with these requirements."[4/] Other commenters have noted the difficulty in complying with the new requirements within the short time frame presented by the FCC.[5/] Net2Phone does not currently have E911 service availability in all areas of the United States. In many areas it is not possible or economically feasible to obtain E911 service.

Like many VoIP providers, Net2Phone has not negotiated directly with ILECs to provide E911 services, but is able to provide such services through contracts with third parties like Level 3, IDT, and Intrado. Even all three of these companies put together, however, do not provide E911 coverage to all areas in the United States, and Net2Phone estimates that E911 service through such third-party services may not be available in as much as 28% of the country. Net2Phone has neither the resources nor the ability to negotiate agreements and implement all of the technical and operational requirements to connect to these remaining markets. If Net2Phone and other VoIP providers are prohibited from providing VoIP services without E911 in these areas, these areas may end up excluded from the benefits of VoIP technology.

Rather than denying, *de facto*, availability of VoIP services and the benefits of competition to significant areas of the country, the FCC should modify its regulation to find provision of basic 911 services to VoIP subscribers to be sufficient in those areas

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3/ *VoIP E911 Order* at 12067-68, ¶ 37.

4/ *Id*.

5/ *See, e.g.*, *E911 Requirements for IP-Enabled Service Providers*, WC Dockets No. 05-196, Reply Comments of SBC Communications, Inc. at 1-2 (filed Aug. 15, 2005); *E911 Requirements for IP-Enabled Service Providers*, WC Dockets No. 05-196, Comments of the Voice on the Net Coalition at 5-7 (file Aug. 15, 2005).

where E911 service is not reasonably available to VoIP providers through third-party vendors.

B. Consumers Would Be Better Served if Provision of Basic 911 Services Is Permitted for Nomadic and Foreign Exchange VoIP Users Until an Automatic Location Solution for VoIP Subscribers Can Be Achieved.

Until an automatic location solution can be achieved for nomadic VoIP subscribers, the E911 Registered Location requirement may be worse for many subscribers than simply having access to basic 911 service. This is because under the rules as adopted the carrier must transmit as part of E911 data the customer location information most recently registered by the subscriber.[6/] If the subscriber fails to timely update his Registered Location, or if the update process has not been completed at the time of a 911 emergency call,[7/] the Public Service Access Point ("PSAP") will receive inaccurate location information for the call. With basic 911 service, the call would be routed to a call center where the subscriber can identify his location. While this is not the preferred situation in some situations where the 911 caller is unable to speak or does not know his location, in most situations it will be preferable to having emergency personnel respond to the wrong location.

If VoIP providers are prohibited from offering services in locations where they cannot provide full E911 capabilities, this problem will be exacerbated. Subscribers will have an incentive when they relocate to such areas not to report their new Registered Location because doing so would require that their VoIP service be cut off. Net2Phone may not, in fact, even be capable of shutting off service to subscribers who move out of

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6/ *VoIP E911 Order* at 12072-73, ¶ 46.

7/ Because Net2Phone relies on third party LECs to transmit E911 information, it may take up to five days for an address change to come into effect.

areas where Net2Phone is capable of providing E911 service because the company has no way to know the subscriber has moved unless or until it is so notified by the subscriber himself.

Earlier this year, when the Canadian Radio-television and Telecommunications Commission ("CRTC") issued its own VoIP 911 order, it required that fixed VoIP service subscribers be provided E911 capability, but required, as "an interim solution," that nomadic and foreign exchange VoIP service subscribers be provided basic 911 service. The CRTC described basic 911 as a service that "connects the caller to a central call centre which then connects the call to the correct emergency response centre, at which point the caller must identify his or her location in order for an emergency response service to be dispatched."[8/] Basic 911 service for VoIP subscribers is readily available throughout the United States through third party vendors such as Intrado. Net2Phone urges the FCC to follow the lead of the CTRC and require E911 capability within 120 days only for fixed VoIP, while requiring that nomadic and foreign exchange VoIP subscribers be afforded basic 911 capability until such time as an automatic location capability can be developed and implemented for nomadic VoIP services.

III. THE FCC SHOULD CLARIFY THAT THE DIRECT PROVIDER OF VoIP SERVICES, NOT THE WHOLESALER, IS RESPONSIBLE FOR PROVISION OF 911 SERVICES.

Net2Phone joins those commenters who urge the FCC to clarify that its order for provision of E911 capability applies to the direct provider of the VoIP service and not an

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8/ Canadian Radio-television and Telecommunications Commission, *CTRC Decision on 9-1-1 Emergency Services for VoIP Service Providers*, News Release (Apr. 4, 2005) available at http://www.crtc.gc.ca/eng/NEWS/RELEASES/2005/r050404.htm.

underlying VoIP services wholesaler.[9/] The wholesaler has no direct connection with the subscriber. If the Commission retains the regulatory provision requiring registry and update of a subscriber's Registered Location, the rationale for excluding the wholesaler is even greater because the wholesaler has no ready way to determine who the subscriber is, let alone track his or her location.

IV. PROVISION OF E911 SERVICES TO VoIP SUBSCRIBERS MAY NOT BE TECHNICALLY OR ECONOMICALLY FEASIBLE IN ALL AREAS.

Net2Phone provides wholesale VoIP services to small cable companies and other small VoIP service providers that are able to bring the advanced technology provided by VoIP services to customers in many small, rural areas of the country. In some of these areas, neither Net2Phone, its retail VoIP services client, nor third-party LECs may be able to negotiate and implement the interconnection agreement with the local ILEC needed to provide full E911 service capability because the rural ILEC may be exempt from statutory and regulatory provisions requiring it to enter into such an agreement.[10/]

Even where an ILEC is willing to negotiate the interconnection agreement necessary to establish E911 capability, the number of customers potentially served by the VoIP provider may not be sufficient to justify the cost of the agreement. Net2Phone has been quoted costs of $250,000 and higher per rate center per T1 trunk for building out to the ILEC tandem for purposes of providing E911 service. Net2Phone targets its wholesale service at small and medium sized cable companies who do not have the resources to build a voice solution on their own. These companies simply cannot afford

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9/ *See, e.g.*, *E911 Requirements for IP-Enabled Service Providers*, WC Dockets No. 05-196, Comments of RNK, Inc., d/b/a/ RNK Telecom, at 11 (filed Aug. 15, 2005).

10/ 47 U.S.C. ¶ 251(f) (providing an exemption from the requirement to enter into an interconnection agreement for rural telephone companies under certain circumstances).

to make investments of the size necessary to implement a full E911 capability and may be forced out of the VoIP business, causing consumers in these primarily rural areas to lose the benefits of competition in voice services markets.

In addition to the costs associated with building out E911 facilities, it takes significant amounts of time to negotiate agreements and integrate all of the systems and networks necessary to provide full E911 service in rural areas. It is unlikely that VoIP providers in those rural areas would be able to meet the Commission's November 28, 2005 deadline for provision of E911. The capability of providing basic 911 service through a contract with a third party, however, should be well within the reach of even the smallest VoIP provider.

Because there may be regulatory, economic, and time constraint barriers to provision of full E911 capability by small, rural VoIP providers, the Commission should consider finding provision of basic 911 service to be sufficient for such providers.

V. CUSTOMER LOCATION STANDARDS FOR VoIP OFFERED OVER WI-FI SHOULD NOT BE HIGHER THAN THOSE REQUIRED FOR CELLULAR CMRS CARRIERS.

The FCC should not establish customer location standards for VoIP services offered over Wi-Fi wireless Internet that are greater than those established for cellular telephone service. It is technologically more difficult to determine a VoIP user's location in a Wi-Fi network than it is in a traditional cellular telephone network because the Wi-Fi areas are far wider than the triangulated cell tower areas used to pinpoint a wireless 911 call. As the Information Technology Industry Council points out, a Wi-Fi VoIP user will

always be within a few hundred feet of a Wi-Fi access point.[11/] The user may not be near enough to multiple Wi-Fi access points to even allow a triangulation location solution, and the user's proximity to the Wi-Fi access point he is using is impossible to know.

VI. CONCLUSION

For the foregoing reasons, Net2Phone respectfully requests that the Commission: (1) determine that the provision of basic 911 service is sufficient in areas where E911 service is not reasonably available to VoIP providers through third party vendors; (2) determine that the provision of basic 911 service is sufficient for nomadic and foreign exchange VoIP users until an automatic location technology solution can be achieved; (3) clarify that the required provision of E911 capability applies only to direct providers of VoIP services to end users and not to an underlying VoIP services wholesaler; (4) determine that the provision of basic 911 service is sufficient in rural areas where regulatory or economic barriers prevent reasonable implementation of E911; and (5) establish customer location standards for Wi-Fi VoIP services that are no more stringent than those that apply to cellular telephone services.

Respectfully Submitted,

/s/ Elana Shapochnikov

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11/ *E911 Requirements for IP-Enabled Service Providers*, WC Dockets No. 05-196, Comments of the Information Technology Industry Council, at 10 (filed Aug. 15, 2005).

CERTIFICATE OF SERVICE

I, Ernest C. Cooper, hereby certify that on this 14th day of September 2005, the foregoing Reply Comments of Net2Phone, Inc., were filed electronically through the FCC's Electronic Comments Filing System (ECFS) and copies were served on the following as indicated:

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